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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Bruce Eisen et al.

Assignee: User Trends, Inc.

Title: Electronically Distributing Promotional And Advertising Material
Based Upon Consumer Internet Usage

Serial No.: 09/379,167 Filing Date: 08/23/99

Examiner: John L. Young Group Art Unit: 3622

Docket No.: M-7729 US

SUPPLEMENTAL APPEAL BRIEF

Mail Stop: SUPPLEMENTAL APPEAL BRIEF
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTION

Pursuant to 37 CFR 1.193(b)(2)(ii), "where prosecution is reopened by the primary examiner after an appeal . . . , appellant [may] request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief." Accordingly, the Applicant hereby requests for the appeal to be reinstated and provides this Supplemental Appeal Brief, herewith, in compliance with 37 CFR 1.193(b)(2)(ii) and to address issues and arguments in Examiner's Office Action mailed on January 27, 2004 (hereafter, "Paper #33").

I. REAL PARTY IN INTEREST

The real party in interest is UserTrends, Inc. 1801 Avenue of the Stars, Suite 929, Los Angeles, CA 90067.

II. RELATED APPEALS AND INTERFERENCES

This Supplemental Appeal Brief is to reinstate a pending appeal from the Examiner's rejection issued on April 23, 2003 (hereinafter "Paper #27"). The Notice of Appeal was mailed on

July 15, 2003 and received on July 21, 2003 in the U.S. Patent and Trademark Office. The Appeal Brief (Paper #32) was filed on September 19, 2003. There are no related interferences.

III. STATUS OF CLAIMS

Claims 1-52 and 75-82 are currently pending in the Application. The appeal is directed to the rejection of claims 1-52 and 75-82, a copy of which appears in the Appendix Of Claims on Appeal attached to the Appeal Brief, as filed.

IV. STATUS OF AMENDMENTS

No Amendment has been filed in response to the last rejection of the Examiner in Paper #33.

V. SUMMARY OF THE INVENTION

Briefly, the present invention relates to a novel system for electronically tracking web pages visited by an identified user, without requiring the user to provide any personal or identifying information to the system. To accomplish this, the system sends an email message to the identified user. The email contains a link to a web page, and specifically embedded in the link is a "unique identifier" for identifying the particular user.

An example of a link is shown in Figs. 6B, 6C namely "http://www.mystore.com/?XXXX". (Figs. 6B, 6C are attached to the Appeal Brief as **Exhibit 1**). A first portion of the link "http://www.mystore.com" constitutes the web page address. A second portion of the link "XXXX" constitutes the unique identifier.

Referring to Fig. 7A (attached as **Exhibit 2** to the Appeal Brief), when the user selects the link in the email, then the single act of selecting the link results in the following:

- (1) the system forwards the link ("http://www.mystore.com/?XXXX") to a server computer hosting the web page;
- (2) the server computer sends the web page data (for "http://www.mystore.com") to the user's browser for display;

and

- (3) the server computer records the unique identifier ("XXXX") in a log in association with the web page address and other related details (IP Address 701, Log Time 702, etc.), as shown in Fig. 7A.

Accordingly, the multiple entries in the log and the related details provide accurate and concise information about the particular web pages visited by the user, the IP address of the user's computer, the duration of time the user visited each web page, etc. Advantageously, each entry in the log can be directly traced to a particular user because the unique identifier for that user is recorded in the log in association with that entry. As such, the system can analyze the log records to build user profiles based on the detailed information in each entry.

It is noteworthy that unlike the prior art references cited, the above-mentioned three functions can be performed without the need for a "dedicated server" (e.g., email sensor server). That is, the web-hosting server inherently captures and records all the needed detailed information in a log, without requiring active registration of the individual, or reliance on any intrusive profiling mechanisms (e.g., cookies) that require read/write access to the "client computer," or substantial communications and operational overhead.¹

The particular privacy sensitive features and technological advantages of the tracking method of the present invention in contrast to the inconvenient and intruding features of prior art consumer profiling systems are fully disclosed in Declaration of Bruce Eisen, CEO of UserTrends, Inc., and Declaration of James Fedolfi, VP of eContacts, Inc., attached as **Exhibit 3** to the Appeal Brief. Said under oath executed declarations are submitted as objective evidence of non-obviousness, pursuant to MPEP Section 716. The board is hereby requested to review and consider the declarations.

VI. ISSUES

- (1) Whether the Examiner's rejection of claims based on "common knowledge" in absence of any supportive evidence as required under MPEP Sections 2144.03 and 2143 is proper,

particularly when such supportive evidence has been seasonably requested by the Applicant, "for each instance of rejection," and the Examiner has failed to provide any evidence, whatsoever.

(2) Whether the systems and methods defined in claims 1-52 and 75-82 are obvious in light of the teachings of Capiel, United States Patent No. 6,449,634 (hereinafter "Capiel").

VII. GROUPING OF CLAIMS

Claims 1-52 and 75-82 should be grouped as provided below.

Group 1: Claims 1, 22, 45, 52, 75, 78, and 81.

Group 2: Claims 2, 10, 23, 46, 76, 79, and 82.

Group 3: Claims 3, 4, 24, 25, 47, 48, and 51.

Group 4: Claims 5, 26, and 50.

Group 5: Claims 6-14, 27-35, and 80.

Group 6: Claims 15-21, 36-44, 49 and 77.

The claims do not stand or fall together, regardless of grouping, for reasons set forth in the Appeal Brief and the arguments provided below. A brief summary of the elements claimed in each group is provided in the Appeal Brief.

ARGUMENT

The arguments disclosed in the Appeal Brief, filed on 09/19/2003 (Paper #32) are hereby incorporated by reference herein in their entirety. The Examiner's rejections in Papers #27 and #33 cite the same single reference, namely U.S. Patent 6,449,634 ("Capiel"), and propose the same arguments to reject the pending claims under 35 U.S.C. § 103(a). Therefore, the Applicant requests the Board to consider all arguments in the Appeal Brief in addition to arguments provided in this Supplemental Response to Paper #33.

✓ The Board is further requested to note that the prosecution of this matter has been unduly delayed, as the Patent Office has lacked enthusiasm to set an interview environment that can help

¹ See Declaration of Bruce Eisen, and Declaration of James Fedolfi, attached herewith as Exhibit 3 to the Appeal Brief.

identify patentable limitations for putting the case in condition for allowance, despite numerous requests by the Applicant.²

✓ Referring back to Papers #27 and #33, each rejection includes numerous admissions that Capiel lacks explicit recitation of all the elements in the claims.³ The Examiner alleges that such elements are "well known in the art." The record shows, however, that the Examiner, in violation of provisions of MPEP §2144.03, has failed to provide any support whatsoever for said allegations, even where expressly requested by the Applicant.⁴

✓ The above shortcomings constitute the premise for this appeal. To wit, the record of the Applicants' last interview with the Patent Office, memorialized by Supervisory Examiner Eric W. Stamber, attests to the impropriety of the repeated rejections and Applicants' frustration of the same.⁵ In fact, the record of the aforementioned interview, attached as **Exhibit 4** to the Appeal Brief, so succinctly summarizes the issues before the board and the distinction between the invention and the cited prior art, that we highly recommend the board to review the interview summary prior to proceeding with considering the points discussed in this brief.

✓ Furthermore, after receiving Paper #33, the representative for the Applicant contacted the Supervising Examiner telephonically and in more than 2 occasions left voice mail messages requesting an opportunity for an Examiner interview to determine if reinstating the appeal can be avoided. No response has been received in return to said requests.

Accordingly, the Applicant respectfully continues to traverse the grounds of rejection for the following reasons:

² After the Appeal was reinstated the Applicant in at least 2 separate occasions, requested the opportunity for an Examiner interview, to no avail. Also, see last paragraph of "Attachment to Interview Summary of Paper #28," signed by Supervisory Patent Examiner Eric W. Stamber, dated June 23, 2003, attached as Exhibit 4 to the Appeal Brief.

³ See Paper #33, pages 5-29 and Paper #27, pages 4-19, 22-31, and every basis of rejection in Papers #27 and #33.

⁴ See Applicant's response to Office Action mailed November 27, 2002, (page 8).

- (i) In absence of a cited reference for a claimed limitation, rejection based on "common knowledge" is not persuasive without a supportive affidavit.⁶
- (ii) The cited reference is non-analogous prior art and therefore is an improper reference.
- (iii) The present invention as claimed is patentably distinct from the cited reference because there is no motivation to modify the reference to perform the claimed process and system of the present invention.

(A) Rejection based on "common knowledge" is not persuasive without further support.

Since Capiel by itself "lacks explicit recitation of all the elements of the claimed invention,"⁷ the Examiner contends that rejection under section 103(a) can be established by considering Capiel in light of "common knowledge" or "well known" prior art. Applicant in numerous instances has requested that the Examiner cite a reference or alternatively provide an affidavit in support of his rejection as required under MPEP §2144.03.

MPEP §2144.03 provides:

"The rationale supporting an obviousness rejection may be based on common knowledge in the art or "well-known" prior art. . . [i]f the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner."⁸

Particularly, on page 8 of the Applicants' response to the Office Action mailed November 27, 2002, the Applicant stated "[p]roviding supportive evidence is particularly important here because in every single page of the 30-page Office Action (and with respect to almost every claim), the Examiner has repeatedly relied on the "common knowledge" . . . as the basis of rejection, without once offering any evidence to support this basis. Therefore, compliance with the provisions of MPEP §2144.03 and MPEP §2143 for *each instance* of rejection based on

⁵ See second and last paragraph of "Attachment to Interview Summary of Paper No. 28," signed by Supervisory Patent Examiner Eric W. Stamber, dated June 23, 2003, attached as Exhibit 4 to the Appeal Brief.

⁶ MPEP §2144.03.

⁷ Paper #33, pages 5-29.

⁸ See also MPEP §2143.

"common knowledge" is requested." (emphasis in original).

The examiner has failed to provide any support, whatsoever, for the allegation of common knowledge. Under the provisions of 37 CFR 1.130, 1.131, or 1.132, no new affidavits may be submitted at this point of the appeal process. As such, without supportive evidence, there is no sufficient basis for establishing a *prima facie* case of obviousness. Therefore, it is respectfully submitted that, at least for this reason alone, the arguments set forth in the Office Action regarding "common knowledge" should be stricken.

✓(B) The cited reference is non-analogous prior art.

It is respectfully submitted that Capiel is directed to non-analogous prior art. That is, Capiel does not function in the same manner as the claimed invention, nor does it produce the same or similar results.

The criteria for determining whether prior art is analogous are twofold. First, one must determine whether the art is from the same *field of endeavor*, regardless of the problem addressed. Second, if the reference is not within the field of the inventor's endeavor, one must determine whether the reference still is *reasonably pertinent to the "particular problem"* with which the inventor is involved.⁹

Capiel "relates to the detection and monitoring of file formats which can be processed and displayed at an E-mail client."¹⁰ As such, Capiel's field of endeavor relates to determining the "format" of the content of an email message. Conversely, the present invention is unrelated to content format. Instead, email is used as a tool to forward a link with an embedded identifier to an email recipient, regardless of the format. Therefore, it is respectfully submitted that Capiel is not within the field of endeavor of the present invention.

Referring to Capiel's Figures 1 and 2, attached as **Exhibit 5** to the Appeal Brief, and

⁹ *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979).

¹⁰ See Abstract.

column 3, lines 5-55, email content may be produced in various formats such as in "plain text" or "HTML" format. It is more advantageous for a vendor to send promotional content in HTML format because, in addition to plain text, visual elements such as pictures or logos can be also included.

Unfortunately, however, some older email reader client software is not HTML enabled and can only read plain text emails. Therefore, it is useful for a vendor to determine if an email client is HTML enabled, so that the promotional material can be forwarded accordingly.

Capiel's solution is to survey the email client software in advance to determine if the email reader client can successfully read HTML content. The results of the survey are then collected into an email sensor database (132).

Referring to Fig. 1 of Capiel, to accomplish the above, the vendor system must communicate with an email sensor server (130) that in turn communicates with the email clients to determine system compatibility. In other words, according to the teachings of Capiel, an email sensor server (130) is necessary to act as an intermediary between the vendor system and the email clients in order to send the survey requests and to collect responses thereto.¹¹

Referring to columns 5, 6, and 7 of Capiel, technically, a test request or email is forwarded to each email client. Each email includes an HTML "image tag" (i.e., 1 by 1 pixel gif image),¹² which is included in a specially identified executable part 316 of the email.¹³ When an HTML enabled email client system opens the email, executable part 316 is automatically executed. As a result, the image tag passes to the email sensor server (130) the "type and version of the email client software."¹⁴ This information basically identifies if the email client is an HTML enabled

¹¹ See col. 5, lns. 5-16 of Capiel.

¹² See col. 6, ln. 56 of Capiel.

¹³ See Figure 3, attached as Exhibit 5 to the Appeal Brief.

¹⁴ See Col. 7, lns. 59-62 of Capiel.

system.¹⁵

Thus, the system of Capiel is related to identifying an HTML enabled client system. That is, in Capiel the particular problem is to identify whether "format" of the email content sent to an email client is compatible with the email client software.

In contrast, the particular problem solved by the present invention is (1) providing an email recipient with access to a target web page, and (2) tracing the recipients activities on the target web page and subsequent web pages visited by the recipient, regardless of the formatting applied to the content of the email or the compatibility of the email content with the email client software.

The particular problems solved by the claimed invention are not even remotely addressed by Capiel. For the above reasons, the Applicant submits that the teachings of Capiel are neither within the same field of endeavor, nor reasonably pertinent to the particular problem solved by the present invention. Therefore, Capiel is non-analogous art and an improper prior art reference.

(C) The present invention, as claimed, is patentably distinct from the cited reference and therefore is not obvious under Section 103(a).

MPEP §2143 provides:

"To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

It is respectfully submitted that none of the aforementioned three basic criteria are met. Applicant has previously provided arguments cogent to all three criteria in the Appeal Brief, the content of which is incorporated by reference herein. In this Supplemental Brief, arguments have

¹⁵ See col. 5, lns. 5-16 of Capiel.

been directed more specifically to new grounds of rejection cited in Paper #33.

In Paper #33, pages 3, 4, 5, 6, and 29 the Examiner has provided cites to portions of Capiel, in bold letters, as new grounds of rejection. The cited portions are:

(1) **Capiel (col. 11, ll. 37-45; col. 11, ll. 50-67; and col. 12, ll. 1-50):**

getClientIDCmd.CommandText='select em_client_id from E-Mail_clients
where name=?'

Set E-mailNameParm=getClientIDCmd.CreateParameter ('E-mailparm',8,1)

GetClientIDCmd.Parameters.Append E-mailNameParm

getClientIDCmd(0)=broswerType....

(2) **Capiel (col. 12, ll. 53-61; and col. 13, ll. 10-25) i.e., "sensor server program" with parameters 'E-mail address' and 'unique mail code'...." and "member id int...."**

(3) **Capiel (col. 11, ll. 37-45; col. 11, ll. 50-67; and col. 12, ll. 1-50) which discloses:**

getClientIDCmd.CommandText='select em_client_id from E-Mail_clients
where name=?'

Set E-mailNameParm=getClientIDCmd.CreateParameter ('E-mailparm',8,1)

"GetClientIDCmd.Parameters.Append E-mailNameParm

getClientIDCmd(0)=broswerType....

(4) **Capiel (col. 1, ll. 43-67 and col. 2, ll. 1-24) discloses: "The invention in addition tracks the responses of the E-mail clients to further refine the 'visual media' group that responds positively to targeted advertisements with images.... the E-mail sensor server may ... determine if a particular file format can be processed and displayed at the E-mail client. . ."**

(5) **Capiel (col. 1, ll. 55-60; col. 12, ll. 53-61; col. 13, ll. 10-25, and col. 11, ll. 37-45; col. 11, ll. 50-67; and col. 12, ll. 1-50) shows "tracking the email recipient's movement within said one or more web sites...."**

(6) **col. 12, ll. 53-61; col. 13, ll. 10-25, and col. 11, ll. 37-45; col. 11, ll. 50-67; and col. 12, ll. 1-50**

The Applicant has carefully reviewed the newly cited portions. Unfortunately, however, the cited portions are not supported with any additional arguments or reasoning by the Examiner.

That is, Paper #33 lacks any additional arguments or reasoning as to how or why the cited portions are relevant and should be considered. Thus, any attempt on the part of Applicant to provide a response to Paper #33 would be "speculative" because the Applicant would have to guess the Examiner's intent in providing the cited portions.

Nevertheless, a review of the cited portions confirms our understanding of the teachings of Capiel in that the E-mail sensor of Capiel functions to "determine if a particular file format can be processed and displayed at the E-mail client." (emphasis added) (See paragraph 4 above).

Furthermore, the 4 lines of code repeated in paragraphs 1 and 3 above are from an exemplary "Visual Basic Script" that runs on the E-mail Sensor server 130 of Capiel. Referring to column 11, lines 5-10 of Capiel, the script's functionality is illustrated in FIG. 7 of Capiel. FIG. 7 is related to a method of determining an email client software type and associating the determined type with a user's email address (see steps 610 to 618). The Applicant, unfortunately, due to the lack of any supportive arguments in the Office Action cannot speculate how the process disclosed in FIG. 7 teaches or suggests the claimed invention.

The Applicant has further reviewed the remaining cited portions in conjunction with all the other portions cited in Paper #33. Unfortunately, the Applicant is unable to formulate any intelligible counter arguments, as it remains vague to the Applicant how the newly cited portions add anything at all to the submitted arguments in the previous Office Actions.

For example, referring to claim 75, examined and rejected by the Examiner, the Applicant invites the Examiner to explain how any of the cited portions of Capiel above teach or suggest any of the following elements that particularly recite the relationship between the URL and IP Address stored in the log to track the web pages accessed by the user:

- (1) "embedding a unique identifier within a uniform resource locator (URL) . . . the URL identifying one or more *web pages*;"

(2) "including the URL in form of a link in an email . . . , wherein *selecting the link provides the email recipient with access to the one or more web pages;*"

(3) "providing the unique identifier to the server computer by way of a *request* submitted by the client computer to access *said one or more web pages*, . . . wherein the *request* includes the URL in which the unique identifier is embedded;"

(3) . . . "automatically storing the *unique identifier* in association with the *IP address* of the client computer in a log file of the server computer; and"

(4) "automatically storing *access information about the one or more web pages visited by the email recipient in association with the IP address of the client computer in the log file of the server computer.*" (emphasis added)

Furthermore, there can be no motivation to modify Capiel to perform the claimed process and system of the present invention because Capiel uses a different method, configuration, and system structure, altogether to determine if a particular file format can be processed by an email client. Some of the differences are enumerated below.

(1) Capiel includes an image tag in a particular executable portion of an email. This is not equivalent to embedding a unique identifier into a website address, as claimed in the present invention.

(2) In Capiel, the image tag is automatically executed once the email is opened. This is not equivalent to a user actively selecting a web site address with the embedded unique identifier, as claimed in the present invention.

(3) Execution of the image tag of Capiel simply forwards certain file format information to the email sensor server. In the present invention, selecting the web site address provides the

user with access to one or more web sites.

(4) File format information provided to the email sensor server only indicates if an email client is HTML enabled. The image tag does not and cannot provide any information about which web sites were visited by a user who selected a link in the email, as claimed. Further, the image tag cannot cause information about the visited web sites to be automatically recorded in the web log for tracking user behavior.

(5) In the system of Capiel, the email sensor server "serves as a middleman information collection point between the vendor systems . . . and the E-mail clients."¹⁶ That is, the email sensor server is an integral part of the system of Capiel, without which the system of Capiel would fail. The present invention does not require a middleman server for collecting the identifying information.

(6) The email sensor server of Capiel collects information about whether an email client machine includes HTML enabled email software.¹⁷ Therefore, the only data that the system of Capiel can collect is data that resides in the client side. In contrast, the claimed invention causes a unique identifier to be automatically stored into a log file of the web server *in association* with other information that defines consumer activity (see claim 2). According, the present invention does not require access to the client system. Instead, information is retrieved from the server side.

(7) The image tag of Capiel CANNOT provide (nor can it be modified to provide) the email clients with access to other web sites, and the system of Capiel CANNOT function (nor can it be modified to function) without an email sensor server transmitting, monitoring and collecting requests and information transmitted between the email clients, the email server and the vendor systems. In contrast, according to the claimed invention, connection between an email client and a target web page is seamlessly established, at the same time as the unique identifier is transmitted to the web hosting server and recorded in the web log without the need for implementing an intermediary "middleman" email sensor server.

¹⁶ See Col. 3, Ins. 15-21 of Capiel.

¹⁷ See col. 12, Ins. 63-65 of Capiel.

(8) Capiel provides a solution to an old problem dealing with primitive email client software that is limited to reading text messages only. (Such email software is most likely not in use any longer.) In contrast, the present invention claims a method for addressing the most current trends for successfully, accurately, and efficiently collecting information about web page viewing activities of a user without intrusive requests for user registration.

Based on the above and because Capiel is directed to solving a completely different problem using a completely different system, the Applicant respectfully submits that there is no likelihood that the system of Capiel can be successfully modified to perform the claimed process of the present invention. Nor could it be reasonably expected from a person of ordinary skill in the art to modify the system of Capiel to achieve the same results.

Moreover, it has been long held that while the suggestion to combine references may come from the knowledge and common sense of a person of ordinary skill in the art, the fact that such knowledge may have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge.¹⁸

The Examiner has not been able to suggest a reasonable motivation for modifying the teachings of Capiel in the direction of the present invention. Even if one were to modify Capiel, there would be no reasonable expectation of success because embedding an image tag with a unique identifier does not allow a user to access any web pages, and alternatively if in some magical way a user were to access a web page using the system of Capiel, then the unique identifier in the image tag would not have been recorded in the host server's web log.

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Without the benefit of the Applicant's disclosure, there would have been no incentive or reason for one of ordinary skill in the art to contemplate modifying the system of Capiel in any way based on common knowledge. The combination/modification proposed by the Examiner simply is not based on any clear and convincing evidence of a reason, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to combine the references. Rather, the reason, suggestion and motivation for the combination of references proposed by the Examiner

¹⁸ *C.R. Bard, Inc. v. MS Systems, Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998).

is impermissible hindsight reconstruction given the benefit of the Applicant's disclosure.

Since no reasonable motivation has been cited to suggest modifying Capiel in the direction of the claimed invention, a *prima facie* case of obviousness has not been established.

1. The Rejection of Claims 1, 22, 45, 52, 75, 78, and 81

The Applicant incorporates by reference herein the arguments provided in the Appeal Brief under this section, pointing out claim elements not suggested by Capiel.

2. The Rejection of Claims 2, 10, 23, 46, 76, 79, and 82

The Applicant incorporates by reference herein the arguments provided in the Appeal Brief under this section, pointing out claim elements not suggested by Capiel.

3. The Rejection of Claims 3, 4, 24, 25, 47, 48, and 51

The Applicant incorporates by reference herein the arguments provided in the Appeal Brief under this section, pointing out claim elements not suggested by Capiel.

4. The Rejection of Claims 5, 26, and 50

The Applicant incorporates by reference herein the arguments provided in the Appeal Brief under this section, pointing out claim elements not suggested by Capiel.

5. The Rejection of Claims 6-14, 27-35, and 80

The Applicant incorporates by reference herein the arguments provided in the Appeal Brief under this section, pointing out claim elements not suggested by Capiel.

6. The Rejection of Claims 15-21, 36-44, 49 and 77

The Applicant incorporates by reference herein the arguments provided in the Appeal Brief under this section, pointing out claim elements not suggested by Capiel.

For the reasons discussed above with respect to independent claims 1, 22, 45, and 52, 75, 78, and 81, since obviousness may not be established by hindsight reconstruction or conjecture, and because Capiel fails to teach the claimed elements, it is respectfully submitted that the

rejection of all claims under 35 U.S.C. §103 is improper and should be reversed.

CONCLUSION

The prior art of record, considered singly or collectively, fails to disclose or in any way suggest Applicant's claimed invention. Accordingly, appealed claims 1-52 and 75-82 should be allowed.

This Supplemental Appeal Brief is submitted herewith in triplicate along with an Appendix of the Appealed Claims. The requisite fee for filing the brief has been already submitted.

Please feel free to forward any questions and comments to the undersigned, at the phone number (310) 789 2100.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail in an envelope addressed to:

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03/23/04
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Respectfully submitted,



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